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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,659	08/05/2002	James Clifton Potter	200-1165	5314

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EXAMINER

RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/064,659

Applicant(s)

POTTER, JAMES CLIFTON

Examiner

Jeffrey J. Restifo

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Acknowledgments***

1. Acknowledgment is made of the request for reconsideration filed 7/12/04.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 9-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Gustavsson (US 6,366,848 B1).

Gustavsson discloses a vehicle including an apparatus 10 for displaying a maximum sustainable speed of said vehicle, said apparatus including a controller 20, which receives signals and calculates said speed and indicates it on a display portion 18, a pulse wheel sensor 43 for measuring velocity and acceleration, and wherein said apparatus will display a second "standard" maximum speed if the newly measured speed differs by a predetermined amount when the vehicle velocity is zero, as shown in figures 1-3C, and recited in column 1, line 49 through column 2, line 8.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustavsson (US 6,366,848 B1) and in further view of Nagano et al. (US 6,540,035 B2).

With respect to claims 1-3, Gustavsson discloses a vehicle including an apparatus 10 for displaying a maximum sustainable speed of said vehicle, said apparatus including a controller 20, which receives signals and calculates said speed and indicates it on a display portion 18, a pulse wheel sensor 43 for measuring acceleration, and wherein said apparatus will display a second maximum speed if the newly measured speed differs by a predetermined amount, as shown in figures 1-3C, and recited in column 1, lines 49-57. Gustavsson does not disclose the apparatus as being used with a hybrid vehicle. Nagano et al. does disclose a hybrid vehicle with controller 18, as shown in figure 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the speed measuring apparatus of Gustavsson to the hybrid vehicle of Nagano et al. in order to allow an operator to be informed of an optimal or maximum attainable speed for determination of fuel economy and/or battery life.

3. Claims 4-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustavsson as modified by Nagano et al., as applied to claims 1 and 14 respectively above, and further in view of Morrison (US 5,992,553 A).

With respect to claims 4-8, Neither Gustavsson nor Nagano et al. disclose the speed calculations as taking into account slope, friction, drag, and inertia measurements. Morrison does disclose a speed calculating device 46 that takes into account rolling friction of the tires 22, aerodynamic drag, inclination or slope, and inertial force which depends upon the weight of the rider, as recited in col. 1, lines 50-55. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the speed sensing apparatus of Gustavsson as modified by Nagano et al. to take into account the parameters of slope, drag, friction, and inertia, as taught by Morrison, in order to achieve a more precise speed measurement of the vehicle.

With respect to claims 17-20, the method recited in these claims is inherently performed in the use of the speed sensing apparatus of Gustavsson as modified by Nagano et al. and Morrison, described above.

### ***Response to Arguments***

4. Applicant's arguments filed 7/12/04 have been fully considered but they are not persuasive. With respect to the applicant's arguments concerning claims 1, 9, and 14, the limitation "maximum sustainable speed" could refer to any maximum speed because the claim does not specify what parameter is being maximized; for instance, the Gustavsson reference is maximizing fuel economy. The fact that Gustavsson is

displaying a specific speed that is both a maximum and sustainable (or attainable) allows the reference to read on the claims. Further, due to the extreme broadness of claim 1, the controller does not have to be on a vehicle, which is recited as an intended purpose, and the independent claims appears to also read on a radar speed gun commonly used by police. Method claim 14 appears to read on a driver of a vehicle who is certainly capable of determining a maximum (safe) sustainable speed and performing a maneuver in light of that determined speed.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

Art Unit: 3618

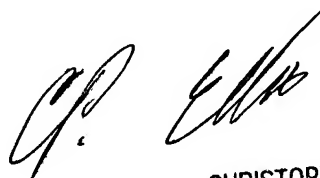
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P. Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR

Jeffrey J. Restifo  
Examiner  
Art Unit 3618



CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600